

AMENDED IN SENATE AUGUST 30, 2011

AMENDED IN SENATE AUGUST 15, 2011

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 322

**Introduced by Assembly Member Portantino
(Coauthor: Assembly Member Fuentes)**

February 9, 2011

An act to add and repeal ~~Sections~~ *Section 680.1 and 680.2* of the Penal Code, relating to forensic evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as amended, Portantino. Forensic evidence: rape kits.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses, upon the request of the victim, and subject to the commitment of resources, to inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from the case, whether or not that information has been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. Existing law also requires that the victim be given

written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified.

~~This bill would require local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits, as specified. The initial report would be due by July 1, 2013. The reports received by the department would be subject to inspection under the California Public Records Act.~~

~~The bill would provide that those provisions would become inoperative on July 1, 2017, and would be repealed on January 1, 2018.~~

~~By imposing additional reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.~~

The bill would establish a pilot program in 10 counties, commencing July 1, 2012, in which all rape kits collected in those counties after that date will be processed by the Department of Justice in department laboratories. The pilot program would be operative until July 1, 2015, or the date when all rape kits collected in the counties participating in the pilot project, during the period of July 1, 2012, through December 31, 2014, are counted, whichever comes first. The department would be required to test every rape kit collected by a pilot project county during the period of the pilot project. The bill would provide that these provisions would be repealed on January 1, 2016.

By imposing additional burdens on local law enforcement entities, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 680.1 is added to the Penal Code, to read:~~

2 ~~680.1. (a) Each local law enforcement agency responsible for~~
3 ~~taking or collecting rape kit evidence shall collect the following~~
4 ~~information for rape kits collected on or after January 1, 2012:~~

5 ~~(1) The total number of rape kits collected during the preceding~~
6 ~~calendar year and, of that total, the number of rape kits for which~~
7 ~~the identity of the assailant is unknown.~~

8 ~~(2) The total number of rape kits tested during the preceding~~
9 ~~calendar year and, of that total, the number of rape kits for which~~
10 ~~the identity of the assailant is unknown.~~

11 ~~(3) For rape kits tested during the preceding year for which the~~
12 ~~identity of the assailant is unknown, the number of searchable~~
13 ~~profiles obtained, the number of offenders identified, and the~~
14 ~~number of other criminal cases associated with that profile.~~

15 ~~(4) The total number of untested rape kits that were not~~
16 ~~submitted for DNA analysis in its possession as of January 1 of~~
17 ~~the reporting year.~~

18 ~~(b) Each local law enforcement agency responsible for taking~~
19 ~~or collecting rape kit evidence shall report, by July 1 of each year,~~
20 ~~the information collected pursuant to this section during the~~
21 ~~preceding year to the Department of Justice. The initial report to~~
22 ~~the department pursuant to this subdivision shall be made by July~~
23 ~~1, 2013.~~

24 ~~(c) The reports received by the department pursuant to~~
25 ~~subdivision (b) are subject to inspection under the California Public~~
26 ~~Records Act (Chapter 3.5 (commencing with Section 6250) of~~
27 ~~Division 7 of Title 1 of the Government Code).~~

28 ~~(d) This section shall remain operative only until July 1, 2017,~~
29 ~~and shall be repealed on January 1, 2018, unless a later enacted~~
30 ~~statute, that is enacted before January 1, 2018, deletes or extends~~
31 ~~that date.~~

32 ~~SEC. 2. Section 680.2 is added to the Penal Code, to read:~~

33 ~~680.2. (a) The Legislature finds and declares the following:~~

34 ~~(1) Existing law requires local law enforcement agencies in~~
35 ~~California to report to the Department of Justice the number of~~
36 ~~specified violent crimes reported in their jurisdictions in the prior~~
37 ~~year. These law enforcement agencies are also required to report~~

1 the number of arrests for these crimes that occur in their
2 jurisdictions in the prior year.

3 (2) It is the intent of the Legislature to establish a pilot project
4 in California to determine whether testing of all rape kits in
5 California counties with low arrest rates for the crime of forcible
6 rape will improve the number of arrests in these counties for that
7 crime.

8 (3) In 2009, forcible rapes accounted for 5 percent of all violent
9 crimes reported statewide but only 1.7 percent of the arrests for
10 violent crime. As reported on the Attorney General's Internet Web
11 site, in 2009 there were 174,579 violent crimes reported. Of these
12 crimes, 8,698 or 5 percent were for forcible rape. Of the arrests
13 for violent crime reported in 2009, only 1.7 percent or 2,050 arrests
14 were for the crime of forcible rape.

15 (4) In 2009, the Department of Justice reported 8,698 forcible
16 rapes in California. The number of arrests reported for 2009 was
17 2,050. This is a statewide arrest rate of 23.6 percent. In 1999, the
18 arrest rate was 30.6 percent; there were 2,887 arrests for forcible
19 rape of the 9,443 forcible rapes that were reported.

20 (b) The Department of Justice shall establish a pilot project;
21 *SECTION 1. Section 680.1 is added to the Penal Code, to read:*
22 *680.1. (a) The Department of Justice shall establish a pilot*
23 *project, commencing July 1, 2012, in 10 California counties to*
24 *open and test all rape kits collected in those counties after the start*
25 *of the pilot project.*

26 (c)

27 (b) The 10 counties chosen for inclusion in this pilot project are
28 counties with an arrest rate of less than 12 percent for the crime
29 of forcible rape as reported to the Attorney General's office for
30 the reporting periods 2007 to 2009, inclusive, and as determined
31 by adding the number of arrests for the crime of forcible rape
32 reported in the county for this three-year period and dividing this
33 amount by the number of forcible rapes reported during this time
34 period.

35 (d)

36 (c) The following counties shall be included in the pilot project
37 based upon 2007 to 2009, inclusive, statistics reported to the
38 Attorney General's office for the crime of forcible rape:

39 (1) Alpine County.

40 (2) Amador County.

- (3) Colusa County.
- (4) El Dorado County.
- (5) Napa County.
- (6) Nevada County.
- (7) Plumas County.
- (8) Shasta County.
- (9) Tehama County.
- (10) Tuolumne County.

~~(e)~~

(d) The Department of Justice shall, in cooperation with each pilot project county, establish a process regarding the collection, storage, and testing of rape kits collected in the pilot project counties. It is the intent of the Legislature that all rape kits that are collected in a pilot program county after a date established by the department, shall be sent to a forensic laboratory of the department for analysis and testing. The department shall test every rape kit collected by a pilot project county during the period of the pilot project.

~~(f)~~

(e) The purpose of this pilot project is to determine whether counties with the lowest arrest rates in California for the crime of forcible rape can bring justice to victims by increasing their arrest rates for this violent crime by having all rape kits that are collected in the county, during the period of the pilot project, tested for evidence of crime. The effectiveness of this pilot project shall be measured by examining county statistics submitted to the Attorney General's office pursuant to existing law that requires the reporting of the number of forcible rapes committed in that county and the number of arrests for forcible rape committed in that county.

~~(g)~~

(f) The pilot project shall become inoperative on the earlier date of either July 1, 2015, or the date when all rape kits collected in the counties participating in the pilot project during the period of July 1, 2012, to December 31, 2014, inclusive, are counted. The department shall test all rape kits collected by a pilot project county during the pilot project.

~~(h)~~

(g) This section shall be repealed on January 1, 2016.

1 ~~SEC. 3.~~

2 *SEC. 2.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

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